

REMARKS

Claims 1-20 are pending in the application. Claims 1-20 are rejected in this Office Action.

Rejections Under 35 U.S.C. §102

The Examiner rejects claims 1-20 under 35 U.S.C. §102(e) as being anticipated over Patil et al. US 6,342,209 ("Patil").

The Examiner states that Patil teaches a cosmetic composition that is made into the form of water-in-oil or oil-in-water emulsion, wherein the mascara contains 0.1-50% water, 0.5-55% oil, 0.1-30% pigment and 0.1-30% of one or more synthetic polymers. (office action page 3).

Applicants respectfully traverse the Examiners rejection.

To anticipate a claim, a single source must contain all of the elements of the claim. See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986); *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1574, 224 U.S.P.Q. 409, 411 (Fed. Cir. 1984); *In re Marshall*, 578 F.2d 301, 304, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

Claim 1 is an independent claim. Claims 2-20 are dependent claims.

Applicants have amended claim 1 to read as, "[a] water and oil emulsion composition for making up the eyes and skin comprising a water phase, an oil phase, at least one silicone resin film forming polymer and at least one film forming polymer selected from the group consisting of (i) a silicone/acrylate copolymer; (ii) a vinyl/silicone copolymer, (iii) and mixtures thereof; and requiring a combination of at least two organic pigments, which are not black or brown in color, that when combined achieve a deep brown or black color, and said pigments are free from iron oxides.

Support for the amendment is found on page 8, lines 13 – 17 and page 9, lines 1-3.

Patil does not disclose combining at least two organic pigments, which are not black or brown in color, that when combined achieve a deep brown or black color, and said pigments are free from iron oxides. Therefore, Patil does not contain all of the elements of the claim and does not anticipate the claims of the subject application.

Based on the amendment of the claims and the above argument applicants request the Examiner withdraw the 35 U.S.C. §102(e) rejection.

Rejections Under 35 U.S.C. §103(a)

The Examiner rejects claims 1-20 under 35 U.S.C. §103(a) as being obvious over Patil et al. US 6,342,209 ("Patil").

The Examiner states that Patil teaches a cosmetic composition that is made into the form of water-in-oil or oil-in-water emulsion, wherein the mascara contains 0.1-50% water, 0.5-55% oil, 0.1-30% pigment and 0.1-30% of one or more synthetic polymers. (office action page 3).

The legal conclusion, that a claim is obvious within § 103(a), depends on at least four underlying factual issues: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations. *Id.*, citing *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966). See *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 57 U.S.P.Q.2d 1057 (Fed. Cir. 2000), and *Ruiz v. A.B.Chance Co.*, 234 F.3d 654, 57 U.S.P.Q.2d 1161 (Fed. Cir. 2000).

In considering the above factual issues:

(1) Patil does not disclose combining at least two organic pigments, which are not black or brown in color, that when combined achieve a deep brown or black color, and said pigments are free from iron oxides and therefore the scope and content of Patil is different than that disclosed in the subject application;

(2) Patil does not disclose the use of specific pigments in combination to achieve a black or dark brown color (Patil, column 5, line 63 – column 6, line 1); and

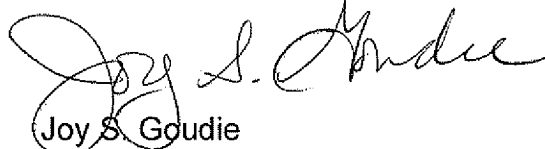
(3) Patil, as one of skill in the art teaches against the subject invention by suggesting use of iron oxides as a suitable pigment (column 5, line 66-67).

The Examiner's conclusion that the subject invention is obvious over Patil is not based on the factual issues and therefore applicant respectfully requests the rejection under 35 U.S.C. §103(a) be withdrawn.

In view of the above amendments and remarks, Applicants respectfully submit that this application is now in condition for allowance and earnestly request such action.

If any points remain at issue which can best be resolved by way of a telephonic or personal interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joy S. Goudie". The signature is fluid and cursive, with the first name "Joy" being particularly prominent.

Joy S. Goudie
Attorney for Applicants
Reg. No. 48,146
Revlon Consumer Products Corporation
237 Park Avenue
New York, New York 10017
(212) 527-5647